



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

DEL MONTE FRESH PRODUCTION, INC.

FOR

DEL MONTE FRESH PRODUCTION, INC. PROCESSING PLANT

VPA Permit No. VPA01057

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Del Monte Fresh Production, Inc., regarding the Del Monte Fresh Production, Inc. Processing Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Culls" means organic solids resulting from vegetable processing operations.
3. "Del Monte" means Del Monte Fresh Production, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Del Monte is a "person" within the meaning of Va. Code § 62.1-44.3.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means the discharge of a pollutant.

7. "Facility" or "Site" means the Del Monte Fresh Production, Inc. Processing Plant located at 15141 Finney Mason Lane, in Bloxom, Virginia, where Del Monte Fresh Production, Inc. manages pollutants which are the subject of the Permit.
8. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
9. "O&M" means operations and maintenance.
10. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
11. "Permit" means VPA General Permit No. VPA01057, which was issued under the State Water Control Law and the Regulation on April 1, 2015, and which expires on March 31, 2025.
12. "Point source" means any discernible, defined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, vessel or other floating craft, from which pollutants are or may be discharged.
13. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources. 9 VAC 25-32-10.
14. "Regulation" means Virginia Pollution Abatement (VPA) Permit Regulation 9 VAC 25-32-10, *et seq.*
15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPA" means Virginia Pollution Abatement.

SECTION C: Findings of Fact and Conclusions of Law

1. Del Monte owns and operates the Facility. At the Facility, Del Monte processes and packages produce.

2. The Facility is the subject of the Permit which allows Del Monte to manage pollutants in strict compliance with the terms and conditions of the Permit.
3. On August 15, and September 1, 2017, Department staff inspected the Facility, and subsequently conducted a file review, for compliance with the requirements of the State Water Control Law, the Permit, and the Regulation. Based on the inspection and follow-up information, Department staff made the following observations:
 - a. Wastewater originating from a sump pump located in a loading dock area at the Facility was observed entering a ditch that discharges into a state water. Evidence of previous wastewater discharge from a bin washing machine was also observed to flow to the loading dock prior to offsite discharge to state waters.
 - b. The land application data logs were incomplete. Application stop time, application zone, rain gauge readings, and operator initials for each day of application was not recorded. Observations were not recorded in a permanently bound log book. Rain gauges were not present in representative areas in the spray irrigation fields and did not adequately monitor and verify application rates.
 - c. Uniform distribution over the land application area was not occurring as indicated by ponding of wastewater observed at the Facility filtration area prior to entering the storage tanks and at the end of one application line.
 - d. Culls were not evenly applied and not incorporated within 48 hours at the cull field associated with the Facility. Additionally, application of culls was observed within the buffer zones.
 - e. The Operations and maintenance manual did not detail all current Facility operations including the storage and culling various melons and the operation and discharge of the bin washer.
 - f. Failure to provide Total Recoverable Chlorine ("TRC") data on Discharge Monitoring Reports ("DMRs") due September 10, 2016, October 10, 2016, and August 10, 2017, as well as providing pH data at an incorrect frequency (Del Monte provided pH data twice a month as opposed to once per week) for DMRs due September 10, 2016, October 10, 2016, and August 10, 2017.
4. Permit Part I.B.I. states, "All pollutant management activities covered under this permit shall maintain no point source discharge of pollutants to surface water except in the case of a storm event greater than 25-year, 24-hour storm."
5. Permit Part I.C.2. states, "Results shall be documented in a permanently bound log book which shall include the following daily entries: date, start and stop time, for each identified zone, meter readings for each event, recorded rain gauge readings in inches, calculated daily application rates in inches, irrigation operators initial each day, comments recorded on equipment problems and/or related maintenance/operational observations... Application rates shall be monitored and verified with rain gauges placed in representative areas and checked each day application occurs."

6. Permit Part I.C.3. states, "Allocation of irrigation systems used for land treatment of wastewater shall be designed, installed and adjusted to: Provide uniform distribution of wastewater of the land treatment site, prevent ponding or pooling of wastewater at the land treatment site..."
7. Permit Part I.C.13. states, "a. All organic solids resulting from the vegetable processing operations shall be disposed of daily by spreading and diking the material evenly into the soil within 48 hours or as soon as practical in the event of adverse weather conditions... d. A minimum buffer zone of fifty (50) feet shall be established for all nearby watercourses."
8. Permit Part I.B.3. states, "The owner shall maintain an O&M manual for the treatment works/pollutant management system permitted herein. This manual shall reflect the practices and procedures, including applicable best management practices, followed by the permittee to ensure compliance with the requirements of this permit."
9. Permit Part I.A.2. states, "The pollutants shall be limited and monitored by the permittee as specified below..."
10. Permit Part II states, "C.1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office... C.2. Monitoring results shall be reported on a DMR or on forms provided, approved or specified by the Department."
11. On December 11, 2017, based on the inspection and follow-up information, the Department issued Notice of Violation ("NOV") No. W2017-12-T-0002 to Del Monte for the violations described in paragraphs C(3), above. Del Monte responded to the NOV on December 18, 2017, and requested a meeting.
12. On January 26, 2018, Department staff met with representatives of Del Monte to discuss the violations.
13. On February 2, 2018, Del Monte submitted a written response to the NOV. The response detailed the actions taken by Del Monte and indicated that all observed noncompliance noted in the NOV had been resolved.
14. On September 19, 2018, Department staff conducted a Facility visit, while the Facility was in operation, and confirmed that the Facility had returned to compliance.
15. Based on the results of the August 15, and September 1, 2017, inspections, and the January 26, 2018, meeting, and documentation submitted on February 2, 2018, the Board concludes that Del Monte has violated Permit Parts I.B.5., I.C.2., I.C.3., I.C.13., I.B.3., I.A.2., II.C.1., and II.C.2., as described in paragraph C(3), above.
16. Del Monte has submitted documentation that verifies and DEQ staff inspected the Facility on September 19, 2018, and verified that the violations described in paragraph C(3), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Del Monte Fresh Production, Inc., and Del Monte Fresh Production, Inc. agrees to pay a civil charge of \$9,750 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Del Monte shall include its Federal Employer Identification Number (FEIN) [(xx-xxxxxxx)] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Del Monte shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Del Monte for good cause shown by Del Monte, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2017-12-T-0002 dated December 11, 2017. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Del Monte admits to the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Del Monte consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Del Monte declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Del Monte to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the

issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Del Monte shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Del Monte shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Del Monte shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

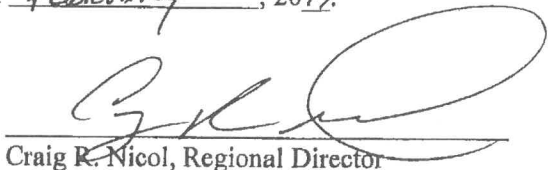
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Del Monte. Nevertheless, Del Monte agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Del Monte has completed all of the requirements of the Order;
 - b. Del Monte petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Del Monte.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Del Monte from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Del Monte and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Del Monte certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind Del Monte to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Del Monte.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Del Monte voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 14 day of February, 2019.


Craig R. Nicol, Regional Director
Department of Environmental Quality

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Del Monte Fresh Production, Inc. voluntarily agrees to the issuance of this Order.

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Date: 12/12/18 By: Paul J. Rice, SVP
(Person) (Title)
Del Monte Fresh Production, Inc.

State of Florida
Commonwealth of Virginia
City/County of Miami-Dade

The foregoing document was signed and acknowledged before me this 12th day of DECEMBER,
2018, by PAUL J. RICE who is VP of
Del Monte Fresh Production, Inc., on behalf of the corporation.

and signed Elisabeth N. Mills
Notary Public

Registration No. _____

My commission expires: _____

Notary seal:

